

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

**Loans to Members and Lines of Credit to Members.**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** NCUA is proposing to amend three subsections of its lending rule to incorporate legal interpretations previously issued by its Office of General Counsel (OGC) regarding permissible maturities for certain types of loans and the effect of partial government guarantees. The proposal clarifies: the conditions for applying the lending rule to loans secured by mobile homes, recreational vehicles, house trailers and boats; that loans secured by manufactured homes may be considered residential real estate loans; and that loans with a partial government guarantee, insurance, or advance commitment to purchase a portion of a loan fall within the rule. The NCUA Board is proposing these changes because it believes it is helpful to federal credit unions (FCUs) and others that may consult NCUA regulations to incorporate these interpretations as part of the rule itself rather than having them stated separately in OGC legal opinions.

**DATES:** The NCUA must receive comments on or before January 25, 2004.

**ADDRESSES:** You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:  
[http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on Proposed Rule 701.21, Loans to Members and Lines of Credit to Members” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

## **Background**

The NCUA Board (the Board) has a policy of continually reviewing NCUA regulations to “update, clarify and simplify existing regulations and eliminate unnecessary and redundant and unnecessary provisions.” NCUA Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. As a result of NCUA’s 2003 review, the Board determined that the rules on loan guarantees and loan maturities should be updated to reflect recent OGC opinions.

## **Summary of Proposed Changes**

The Federal Credit Union Act (the FCU Act) generally limits an FCU’s authority on matters of loan maturity, rates of interest, security and prepayment penalties. 12 U.S.C. 1757(5). Where a loan is secured by a state or federal government insurance or guarantee or in the case of a state or federal program providing an advance commitment to purchase the loan, the FCU Act provides relief from these limitations and permits an FCU to make the loan for the maturity and under the terms and conditions of the government program. 12 U.S.C. 1757(5)(A)(iii). The FCU Act does not specify the extent to which the government program must guarantee or insure the loan, or the portion of the loan the program must commit to purchase. NCUA’s lending regulation mirrors this section of the FCU Act and adds that FCUs may make such loans at rates of interest provided in the government program. 12 CFR §701.21(e). These provisions

have the effect of enabling FCUs to participate in government lending programs that might otherwise be out of reach because of the FCU Act's general limitations.

OGC has issued legal opinions clarifying that the regulation applies whether the government program offers a full or partial guarantee, insurance, or commitment to purchase the loan. The proposed amendment clarifies that a partial government guarantee, insurance, or commitment to purchase a loan is sufficient to effect the application of the regulation. The Board believes that adding this clarification to the regulation will give full effect to the FCU Act and will benefit FCUs and their members by encouraging participation in government lending programs.

The FCU Act prohibits FCUs from granting loans with maturities greater than 12 years. 12 U.S.C. 1757(5). It permits longer maturities, however, for certain loans including those secured by residential real estate and mobile homes. 12 U.S.C. 1757(5)(A). As permitted under the FCU Act, the Board has promulgated rules allowing loan maturities of 20 years for mobile home loans and up to 40 years, or more with specific Board approval, on residential real estate loans. 12 CFR §701.21(f) and (g).

Neither the FCU Act nor the lending regulation defines what constitutes a mobile home. Previously OGC had narrowly interpreted the term to include only homes that met the standards established by an industry association to describe a manufactured home. More recently in legal opinion OGC 01-0262, dated June 4, 2001, OGC interpreted the term to include homes that qualify for the home mortgage interest deduction under the

Internal Revenue Code (IRC). 26 U.S.C. 163(a),(h)(2)(D). The Internal Revenue Service describes three main features any first or second home must have to qualify for the deduction. The home securing the debt must be a house, condominium, cooperative, mobile home, house trailer or similar property that has sleeping, cooking and toilet facilities. In the above-referenced opinion, and in a subsequent opinion dated July 3, 2001, OGC concluded that, if a loan for a house trailer, recreational vehicle (RV) or a boat is secured by a first lien and qualifies for the home mortgage interest deduction, then it is appropriate to permit an FCU to consider it a mobile home loan with a maximum maturity of 20 years.

The Board believes it will be helpful to clarify the lending rule by incorporating this standard into the regulation. An FCU must still ensure that it complies with the other requirements of the rule, namely, that the home is owner-occupied and the loan is secured by a first lien. Of course, FCUs must also perform due diligence to ensure that loans are properly secured and safety and soundness concerns may dictate against extended maturities for any RV, trailer or boat loan with a short useful life.

A third issue OGC recently addressed involves whether a loan secured by manufactured housing should qualify for the longer maturities of residential real estate loans. Legal opinion OGC 03-0934, dated November 17, 2003. Previously OGC equated manufactured housing with mobile homes. Over the past several years, the manufactured housing industry has undergone significant changes. Enhancements to the quality and standards of manufactured housing, and the fact that manufactured

housing is intended to be permanently affixed to the land, prompted OGC to conclude that loans for manufactured houses that are permanently affixed to the land and also meet all other regulatory requirements for residential real estate loans under 12 CFR §701.21(g) will qualify for the longer maturities. The manufactured housing must qualify as real property and be titled as real property under the laws of the state where it is located. The loan must have a first lien on the manufactured housing as required by §701.21(g)(5). If the member-borrower leases rather than owns the land where the manufactured home is located then, to preserve the effectiveness of the FCU's first lien position, the FCU and the land owner should have an agreement providing for cooperation in the event of default and foreclosure. Of course, as a matter of safety and soundness, the FCU should also ensure that, when the member-borrower leases the land where the manufactured housing is located, the lease is at least as long as the term of the loan.

## **Regulatory Procedures**

### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87-2 as amended by IRPS 03-2. The proposal clarifies and expands the lending rules to incorporate recent OGC opinions. The NCUA has determined and certifies that

this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

#### Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). NCUA currently has OMB clearance for §701.21's collection requirements (OMB No. 3133-0139).

#### Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule applies only to federal credit unions. NCUA has determined that the proposed amendments will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 - - Assessment of  
Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

**Agency Regulatory Goal**

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

**List of Subjects in 12 CFR part 701**

Credit unions, loans.

By the National Credit Union Administration Board on November 18, 2004.

---

Mary Rupp

Secretary of the Board



Accordingly, the National Credit Union Administration proposes to amend 12 CFR part 701 as follows:

## **PART 701 – ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS**

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

2. Amend §701.21 by revising paragraphs (e), (f) and (g)(1) to read as follows:

### **§701.21 Loans to Members and Lines of Credit to Members.**

\* \* \* \* \*

(e) Insured, Guaranteed and Advance Commitment Loans. A loan secured, in full or in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the federal government, a state government or any agency of either, may be made for the maturity and under the terms and conditions, including rate of interest, specified in the law, regulations or program under which the insurance, guarantee or commitment is provided.

(f) 20-Year Loans. (1) Notwithstanding the general 12-year maturity limit on loans to members, a federal credit union may make loans with maturities of up to 20 years in the case of:

(i) a loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home, and the mobile home meets the requirements for the home mortgage interest deduction under the Internal Revenue Code,

(ii) a second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and

(iii) a loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

(2) For purposes of this paragraph (f), mobile home may include a recreational vehicle, house trailer or boat.

(g) Long-Term Mortgage Loans:

(1) Authority. A federal credit union may make residential real estate loans to members, including loans secured by manufactured homes permanently affixed to the land, with maturities of up to 40 years, or such longer period as may be permitted by the NCUA Board on a case-by-case basis, subject to the conditions of this paragraph (g).

\* \* \* \* \*